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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,481	04/23/2001	Axel Noethe	I-15247	7474

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EXAMINER	
MCDONALD, RODNEY GLENN	
ART UNIT	PAPER NUMBER

1753                    10  
DATE MAILED: 02/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/763,481</b>  Examiner <b>Rodney McDonald</b>	Applicant(s) <b>Noethe et al.</b>  Art Unit <b>1753</b>	
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*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM

### THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on Dec 11, 2002
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.
- Disposition of Claims**
- 4)  Claim(s) 12-29 is/are pending in the application.
- 4a) Of the above, claim(s) 12 and 13 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 14-29 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)  
 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Election/Restriction***

1. This application contains claims 12 and 13 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP. § 821.01.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 14, 15 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Wandke (DE 43 05 414 A1 (See translation)).

Wandke teach coating a substrate with a metal oxide layer especially a stannic oxide layer, in a vacuum in which a corresponding metal target is inserted into a corresponding chamber and eroded, and this erosion coats the substrate, whereby an oxygen-containing plasma arising from a corresponding basic gas mixture is created in the area between the target and substrate. (Page 1)

The problem is solved according to the invention using the initially-described coating procedure by using a balanced oxidizing and reducing basic gas mixture consisting of at least 20 percent by volume oxygen, hydrogen and a gaseous hydrocarbon or halogenated hydrocarbon in the coating procedure. (Page 1)

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It is also advantageous when the described mixture also contains 5-40 percent by volume argon. (Page 1)

Examples of effective gas mixtures have the following compositions:

20-30 percent by volume H<sub>2</sub>, 20-50 percent by volume O<sub>2</sub>, 20-30 percent by volume hydrocarbons or fluorocarbons with the remainder argon. (Page 2)

The figure shows a block diagram of a sputtering system according to the invention; in particular, an associated sputtering chamber 1 is shown. A substrate 2, e.g. a glass pane, is on the floor of the sputtering chamber. Opposite the glass pane in the sputtering chamber is a negatively poled target 3 (e.g. consisting of pure tin) on a holder 4. A gas supply 5 and a gas exhaust 6 are connected to the chamber. Also on the side of the chamber is an anode 7 consisting of steel or copper which is required for the ion stream (sputtering effect). (Page 2)

The flat glass workpiece is coated with a stannic oxide layer as follows: Tin atoms are knocked out of the intended target 3 by a stream of ion from the target, oxidize in the oxygen-containing atmosphere in the sputtering chamber to form SnO, and are deposited on the substrate 2, i.e., the glass surface. Usually the SnO layer forms the base layer of a multilayer system applied on the glass. The **pressure** during formation of such a layer is approximately **0.01-20 mbar** which is set by suitably feeding and removing the treatment gas by the corresponding devices 5 and 6. (Page 2 and 3) The gaseous atmosphere inherently will reduce the blind charge.

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***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 14-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wandke (DE 43 05 414 A1) in view of Giron (U.S. Pat. 6,277,523).

Wandke is discussed above and all is as applies above. (See Wandke discussed above) It should be noted that Applicant's pressure range is within the range of Wandke's pressures.

The differences between Wandke and the present claims is that the hydrocarbon being saturated is not discussed, the saturated hydrocarbon being one of methane, ethane, propane or butane is not discussed, the volumetric ratio of added hydrocarbon to added oxygen is not discussed, the volumetric ratio of added noble gas to oxygen is not discussed, the tin oxide layer

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being electrochromic is not discussed, the target being tungsten is not discussed, the target containing molybdenum, titanium, cerium, vanadium and/or zirconium is not discussed and the thickness of the electrochromic layer is not discussed.

Wandke's "gaseous hydrocarbons" encompass saturated hydrocarbons such as methane, ethane, propane or butane and therefore teach applicant's claim limitations. (See Wandke discussed above)

Wandke disclose utilizing 20 percent O<sub>2</sub> and 20 percent hydrocarbon this is in a ratio of hydrocarbon to oxygen of 1:1. (See Wandke discussed above)

Wandke disclose 5-40 percent Ar and 20-50 percent O<sub>2</sub> this range allows for a ratio of argon to oxygen of 1:1. (See Wandke discussed above)

Giron teach an inhibited *electrochromic* layer of WO<sub>3</sub>, Nb<sub>2</sub>O<sub>3</sub>, SnO<sub>2</sub>, Bi<sub>2</sub>O<sub>3</sub>, TiO<sub>2</sub>, V<sub>2</sub>O<sub>5</sub>, hydrogenated nickel oxide or MoO<sub>3</sub> material which exists in a decolored or only slightly colored state. (Column 16 lines 10-22)

All the oxide-based layers are obtained by this technique using a metal target, but in a reactive atmosphere containing oxygen. (Column 9 lines 37-40) Since Giron teach utilizing a metal target to deposit the corresponding metal oxide it would be obvious to utilize targets containing tungsten, molybdenum, titanium, cerium, vanadium and/or zirconium.

Giron teach a layer of electrochromic material based on tungsten oxide of 350 nm thickness. (Column 10 lines 11-12)

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The motivation for depositing electrochromic layers utilizing targets of metals for depositing the particular compositions of the layers in particular atmospheres at particular thicknesses by sputtering is that it allows for simplifying the method of manufacturing of the electrochromic devices. (Column 2 lines 28-32)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Wandke by depositing electrochromic layers utilizing targets of metals for depositing the particular compositions of the layers in particular atmospheres at particular thicknesses by sputtering as taught by Giron because it allows for simplifying the method of manufacturing of the electrochromic devices.

***Response to Arguments***

6. Applicant's arguments filed 12-11-02 have been fully considered but they are not persuasive.

***RESPONSE TO THE 35 U.S.C. 102 ARGUMENTS:***

In response to the argument that Wandke does not teach production of electrochromic coatings, it is argued that stannic oxide is an electrochromic layer (as further shown by Giron) and therefore Wandke does teach deposition of an electrochromic layer. (See Wandke discussed above)

In response to the argument that Wandke does not teach the reduction of blind charge produced by the hydrocarbon contained in the sputtering atmosphere, it is argued that since

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Wandke's sputtering atmosphere is the same as Applicant's that the blind charge will be reduced in the deposited film. (See Wandke discussed above)

***RESPONSE TO THE 35 U.S.C. 103 ARGUMENTS:***

In response to the argument that one would not look to Wandke in order to modify the sputtering atmosphere of Giron because Wandke only refers to tin as a sputtering target metal, which is unsuitable for electrochromic coatings, it is argued that Giron teach that SnO<sub>2</sub> (or stannic oxide) is an electrochromic material. Since Wandke teach deposition of stannic oxide (or SnO<sub>2</sub>) one of ordinary skill in the art would modify Giron's atmosphere with the atmosphere of Wandke because Wandke recognize that improvements in the deposited film of stannic oxide (or SnO<sub>2</sub>) which both references deposit as films. (See Giron and Wandke discussed above)

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney McDonald whose telephone number is 703-308-3807. The examiner can normally be reached on M-Th from 8 to 5:30. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen, can be reached on (703) 308-3322. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



RODNEY G. MCDONALD  
PRIMARY EXAMINER

RM

February 13, 2003